



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 12-07154
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: *Pro se*

04/10/2013

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s parents and sisters are Palestinian refugees and residents of Lebanon. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on September 6, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On September 19, 2012, Applicant answered the SOR and requested a hearing. On January 9, 2013, I was assigned the case. On February 5, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

for the hearing convened on February 27, 2013. I admitted Government's Exhibits (Ex) 1 and 2 and Applicant's Exhibit A, without objection. Applicant testified at the hearing. Following the hearing, Applicant submitted on additional documents, which was admitted as Ex. B, there being no objection. On March 12, 2013, DOHA received the hearing transcript (Tr.).

### **Procedural Rulings**

Department Counsel requested administrative notice of facts concerning the Republic of Lebanon (Lebanon) and provided supporting documents to show detail and context for those facts. Applicant agreed to the administrative notice request and the 19 documents were admitted as Hearing Exhibits (HEx.) I through XIX.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing 15 types of facts for administrative notice. See the Lebanon section of the Findings of Fact of this decision, *infra*, for the facts accepted by administrative notice.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 33-year-old software developer who has worked for a defense contractor since October 2011, and seeks to obtain a security clearance. (Tr. 18, 22) His previous manager describes Applicant as a person of strong character and integrity who is mature, trustworthy, and responsible. He was highly regarded by his peers and managers for his work. (Ex. A, Tr. 26A)

In 1979, Applicant was born in Libya. At the time of his birth, his parents were Palestinian refugees. (Ex. 2) In 1987, at age five, Applicant moved with his family to Lebanon, where his grandparents lived. (Tr. 21, 39) As a refugee, he was never a citizen of Libya or Lebanon. (Ex. 2) He has no allegiance, preference, sympathy, or alliance with either country. In September 2011, he obtained a U.S. passport, which is the only passport he has. However, he had Lebanese-issued travel documents allowing him to travel to Lebanon as a refugee. He relinquished the Lebanese travel documents to his facility's security officer. (Ex. B, Tr. 16)

In November 1998, Applicant—then aged 19--moved to the United States. (Ex. 2, Tr. 13) In May 2011, he became a naturalized citizen. From January 1999 to August

2002, he attended college in the United States. In 2001,<sup>2</sup> he attended a university from which he received his bachelor's degree in computer science in August 2003. (Ex. 1, Tr. 22) In April 2004, Applicant married his wife, also a Palestinian refugee, but she was born in Lebanon. (Ex. 2) In 2006, she became a naturalized U.S. citizen. (Ex. 2, Tr. 32) His three daughters were born in the United States and are ages 3, 5, and 7. (Tr. 16, 23) One of his daughters is in kindergarten and the other is in second grade. Applicant and his wife own a home in the United States. (Tr. 34)

Applicant's brother was born in Lebanon in 1980 and now lives in Sweden. In 1950, his father, a retired lab technician, was born in Lebanon and in 1959, his mother, a housewife, was born in Lebanon. His father is 63 years old and his mother is 53 years old. (Tr. 24) His sisters were born in Lebanon in 1985, 1987, 1989, and 1992. His parents and sister reside in Lebanon, but are not Lebanese citizens. They have been provided travel documents by the Lebanese government showing them to be Palestinian refugees living in Lebanon. (Ex. 2) He calls his mother weekly. (Ex. 1, Tr. 28) He sends his parents \$300 monthly. (Ex. 2, Tr. 29) None of his family is involved in politics. (Tr. 37)

Applicant's oldest sister is a student and her husband is an accountant. (Ex. 2, Tr. 24, 31) His next oldest sister is unemployed and her husband is a systems engineer. (Ex. 2, Tr. 24) He is unaware of his third sister's employment, and her husband owns a barbershop. His youngest sister is a student engaged to an individual who works as an air conditioning (AC) technician. (Ex. 2, Tr. 24) In June and July 2008, Applicant visited his family in Lebanon for 21 to 30 days. (Ex. 2) He went alone. None of his family in the United States has met his family living in Lebanon. (Tr. 28)

Applicant asserts he loves the United States and is loyal to this country. (Tr. 25) He went to school here, obtained his degree here, got married here, and has been here since age 19. The commercial side of software development involves a great deal of protecting information for unauthorized disclosure. (Tr. 24-25)

## **Lebanon**

I take administrative notice of the following facts. Lebanon is a nominal democracy with a less-than-perfect human rights record. Lebanese security forces arbitrarily arrest and detain individuals, and torture of detainees remains a problem. Militias and non-Lebanese forces, operating outside the central government's authority, frequently violate citizens' privacy rights.

Lebanon has both a long history of civil war and of foreign influence by Syria. Syria has been designated by the United States as a state sponsor of terrorism, providing support to Hezbollah (Party of God). From 1976 to 2005, Syria maintained troops in Lebanon and the Syrian military is believed to maintain intelligence assets in Lebanon. Lebanon is not a state sponsor of terrorism, but is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers

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<sup>2</sup> During 2001, Applicant was a full time student at both the college and university. (Ex. 2).

"freedom fighters" against Israel. The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah is a Lebanese-based radical group that is the most technically capable terrorist group in the world. The United States remains extremely concerned about the role Hezbollah plays in Lebanon.

The U.S. State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon. Lebanon is not known to be a collector of intelligence or economic information against the U.S.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B—Foreign Influence**

The security concerns about foreign influence are set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The security concerns underlying AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” are established. Applicant has ongoing contacts with his parents and sisters, who are residents of Lebanon. Lebanon has issued them travel documents as Palestinian refugees.

The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Lebanon is not a state sponsor of terrorism, but it is a permissive environment for groups recognized by the U.S. as terrorist organizations, which Lebanon considers “freedom fighters” against Israel. The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah is a Lebanese-based radical group that is the most technically capable terrorist group in the world. The United States remains extremely concerned about the role Hezbollah plays in Lebanon. The U.S.

State Department continues to maintain a travel warning for U.S. citizens contemplating travel to Lebanon.

There is no evidence that Applicant's family members living in Lebanon have been political activists, challenging the policies of the Lebanese government. His father is a retired lab technician, his mother a housewife, and his sisters are students or unemployed. His sisters' husbands work as an accountant, barber, and an air conditioning technician. There is no evidence that terrorists or the Lebanese government have approached or threatened Applicant or his family in Lebanon because of his work in the United States. There is no evidence that his family living in Lebanon currently engages in activities which would bring significant attention to them or that they or other Lebanese elements are even aware that Applicant works for a government contractor or might have access in the future to classified information. As such, there is a reduced possibility that these relatives would be targets for coercion or exploitation.<sup>3</sup>

AG ¶ 7(b), "connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," focuses not on contacts, but rather on relationships with foreign persons, organizations, governments, or countries that pose a risk of a conflict of interest. While there is a significant degree of overlap between AG ¶ 7(a) and ¶ 7(b), the concern under AG ¶ 7(b) is that Applicant has such close bonds to his parents and sisters in Lebanon that he could be placed in the position of having to choose between their interests and his obligation to protect classified information. Applicant does not deny his affection for his parents and siblings. He talks to his mother weekly. AG ¶ 7(b) also applies.

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<sup>3</sup> Contacts with relatives living in a foreign country are presumed to be "not casual." See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the [foreign] government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)); an applicant's "refusal to travel to [the foreign country]" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). These factors may have probative value under Guideline B; however, I conclude that many of these attributes are pertinent to the analysis in this case under the whole-person concept. Moreover, there is persuasive case law urging broad consideration of numerous factors in the whole-person concept, which overrides these restrictive decisions.

The closeness of Applicant's family ties makes it very difficult to apply mitigating condition AG ¶ 8(a):

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely that the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

As a U.S. immigrant, Applicant may reasonably be expected to have some contact with, and feelings of affection or obligation for, his immediate family in Lebanon. Yet, Applicant's relationships and loyalties to his parents and sisters cannot reasonably be characterized as minimal. The foreign influence concerns may be overcome by evidence of "deep and longstanding relationships and loyalties in the U.S." AG ¶ 8(b) provides as follows:

(b) there is no conflict of interest either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant has lived continuously in the United States since August 1998. In 2004, he married a naturalized U.S. citizen (a Palestinian refugee born in Lebanon). Applicant earned his bachelor's degree in the United States, and in May 2011, voluntarily acquired his U.S. citizenship. He has no financial ties to Lebanon. He and his wife own a home in the United States. His three children were born in the United States.

AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," has limited applicability in this case to his sisters, but not to his parents.

## **Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10(a)(1) describes one condition that could raise a security concern and may be disqualifying in Applicant's case, "(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport." Applicant did not have a foreign passport, but had travel documents issued to him as a Palestinian refugee after becoming a U.S. citizen. Possession of the travel documents establishes AG ¶ 10(a).

AG ¶ 11(e) provides conditions that could mitigate security concerns if the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. On March 4, 2013, Applicant relinquished his foreign travel documents to his company's facility security officer. (Ex. B) AG ¶ 11(e) applies, and I conclude Applicant has mitigated the foreign preference security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. Applicant has connections to the United States. In 1998, he immigrated to the United States. In 2003, he obtained his bachelor's degree from a U.S. university. In May 2011, he became a U.S. citizen. His spouse and three children are U.S. citizens and live in the United States where he and his wife own a home.

There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He considers the United States to be his home. Applicant's demeanor, sincerity, and honesty at his hearing are important factors militating towards approval of his access to classified information. These factors tend to support the granting of his clearance.

However, the circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance at this time. Applicant's parents and sisters live in Lebanon. Lebanon is a permissive environment for groups recognized by the U.S. as terrorist organizations. The Lebanese government recognizes Hezbollah as a legitimate resistance group and political party. Hezbollah is a Lebanese-based radical group that is the most technically capable



terrorist group in the world. Such an organization would not hesitate to coerce Applicant through his parents or sisters to obtain classified information. Applicant has frequent contact with his mother. Should his parents move to the United States, security concerns would be greatly alleviated.

A foreign influence decision concerning Lebanon must take into consideration the geopolitical situation in Lebanon as well as the dangers existing in Lebanon. Although there is less danger of terrorism being where his parents and sisters live than in other parts of Lebanon, terrorists are everywhere in Lebanon. I have continuing doubts that Applicant's parents and sisters living in Lebanon will remain safe from terrorist coercion should Applicant receive access to classified information.

I conclude Applicant has not fully mitigated the foreign influence security concerns arising from his parents' and sister's continued residence in Lebanon. For the reasons stated, I conclude he is not eligible for access to classified information.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Foreign Preference:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Foreign Influence:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

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CLAUDE R. HEINY II  
Administrative Judge